

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of:  
Nykoluk et. al.

Appln. No. 09/604,995

Filed: June 28, 2000

For: TOWABLE WHEELED BACKPACK

Art Unit: 3727

Examiner: Tri M. Mai

Docket No.: 26/1143US

TECHNOLOGY CENTER A3700

DEC 08 2003

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Assistant Commissioner for Patents  
Washington, D.C. 20231

**Declaration of Prior Invention in the United States to Overcome Cited Patent**  
**(37 C.F.R. §1.131)**

Being of legal age, I, Cory O. Nykoluk declare and state as follows:

1. This declaration is to establish completion of the invention described in the above referenced application in the United States, at a date prior to June 13, 2000, a date prior to the effective date of United States Patent 6,279,706, cited by the Examiner.
2. On my own, in regard to an attempt to overcome various disadvantages of prior art wheeled backpacks, I conceived of a piece of wheeled baggage in the form of a backpack having a curved telescoping towing member that is pivotally attached to a rigid base.
3. Through my then employer, TRG, LLC, the current assignee of the present application, I contracted with an independent company for the construction of a prototype towing member for the backpack according to my conception.
4. Additionally, a prototype backpack was produced by my then employer, TRG, LLC, that met with the specifications of my conception, except that it did not have included the conceived towing member that was prototyped as described in paragraph 3.
5. Through TRG, LLC, I sent the prototype towing member and the prototype backpack produced by TRG, LLC that did not include the towing member to a potential commercial manufacturer outside the United States under a contract for the production of a complete prototype of the combined backpack and towing member according to my conception.

6. From the overseas company with which TRG, LLC had contracted to construct the complete prototype backpack, I received an actual, physical embodiment of the complete prototype backpack, which I examined. The prototype towing member and the prototype backpack produced by TRG, LLC that did not include the towing member were not returned from the overseas company with which TRG, LLC had contracted to construct the complete prototype backpack.
7. My receipt and examination of the complete prototype backpack occurred in the United States of America.
8. From my examination, I determined the complete prototype backpack had been constructed in accordance with the specifications provided by me, which were also in accordance with my conception.
9. The complete prototype backpack that I had received comprised a pack constructed of flexible material that had a rigid base to which two wheels were attached. As well, the complete prototype backpack comprised a single-pole curved, telescoping towing member that was attached to the rigid base by a ball-and-socket joint. Additionally, the complete prototype backpack comprised a resiliently flexible backing sheet having a contoured surface that was positioned on a wall of the pack so as to rest against a user's back when the backpack was worn on the user's back as a backpack.
10. I believe the complete prototype backpack was an actual reduction to practice of an embodiment of the invention of which I had conceived.
11. All of the thoughts and events described in paragraphs 2-10 above occurred prior to June 13, 2000.
12. Photographic images of the complete prototype backpack that is described above in paragraphs 2-10 were taken after I received and had examined the complete prototype backpack. A true and accurate copy of some of these photographic images are attached to this declaration as Exhibit A and are presented in support of the factual assertions made by me in this declaration.
13. Since the time of my receipt and examination of the complete prototype backpack described above in paragraphs 2-10, the complete prototype backpack has been either lost or destroyed. Because the complete prototype backpack is no longer available, the photographic images described in paragraph 12 along with my declarations herein are reliable and sufficient evidence of the existence of the complete prototype backpack.
14. A description of some critical objects shown in the photographs in Exhibit A follows.

- Photo 1 - Shows the complete prototype backpack with the curved towing member extended and the main compartment opened.
- Photo 2 - From another perspective, shows the complete prototype backpack with the curved towing member extended and the main compartment opened.
- Photo 3 - Shows the multiple compartments of the complete prototype backpack having zipper closures.
- Photo 4 - Shows the shoulder and waist straps for use when carrying the backpack on a user's back.
- Photo 5 - Shows the multiple compartments closed, the two wheels attached to the rigid base, and how the shoulder and waist straps can be concealed behind a zippered panel.
- Photo 6 - From a different perspective, shows the backpack compartments closed.
- Photo 7 - From a top view of the complete prototype backpack, shows the towing handle, which is attached to the curved telescoping towing member in its retracted configuration.
- Photo 8 - Shows the two wheels attached to the rigid base.
- Photo 9 - Shows a top view of the rigid base after removal from the backpack, including in the center of the rigid base a view of the socket that is a part of the ball-and-socket joint through which the telescoping member attaches to the rigid base.
- Photo 10 - Shows the rigid base after removal from the backpack in a view from the side of the rigid base that rests against the user's back when assembled as part of a pack that is worn as a backpack. This photo includes a view of the socket to which the telescoping member attaches.
- Photo 11 - Shows the rigid base after removal from the backpack, in particular highlighting the structure of the socket to which the telescoping member attaches
- Photo 12 - Shows a similar view to photo 11 of the rigid base after removal from the pack, further highlighting the structure of the socket to which the telescoping member attaches, by showing the socket partially deconstructed.

Photo 13 - Shows the inside of the complete prototype backpack, particularly showing the channel member through which the telescoping member passes, as well as showing the backing sheet.

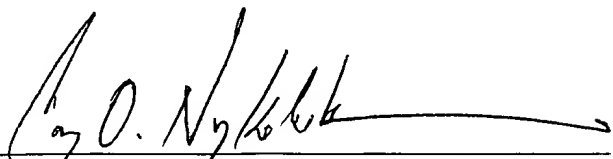
Photo 14 - Shows the backing sheet being held by a person's fingers, the backing sheet being attached to the channel member through which the telescoping member passes. Also shows the telescoping member meeting the rigid base at the ball-and-socket joint at the lower middle portion of the photograph.

Photo 15 - Shows the channel member and the backing sheet, and particularly shows the ball on the end of the telescoping member, the ball being a portion of the ball-and-socket joint, which is a pivotal connection between the telescoping member and the rigid base. This photo shows the ball after it has been removed from the ball-and-socket joint and after the rigid base was removed from the complete prototype backpack.

Photo 16 - Highlights the connection of a portion of the telescoping member to the top of the complete prototype backpack.

15. From the assertions in this declaration and a review of the photographs presented in Exhibit A, I believe it to be shown that I was in possession of an actual reduction to practice of the invention disclosed in the above referenced application, Application Serial No. 09/604,995, prior to June 13, 2000.
16. This declaration is submitted prior to a final rejection.
17. I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

26 NOV 2003  
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Date

  
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Cory O. Nykoluk,  
Inventor of U.S. Patent App. Ser. No. 09/604,995